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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2009-25

13 **STUART DAVID GLADSTEIN**
10940 Wilshire Blvd., Suite #1600
14 Los Angeles, CA 90024
Certified Public Accountant Certificate No.
15 **CPA #33362**

A C C U S A T I O N

Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy.

22 2. On or about December 4, 1981, the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number CPA #33362 to Stuart David Gladstein (Respondent). The
24 Certified Public Accountant Certificate will expire on January 31, 2010, unless renewed. The
25 certificate was expired and, thus, not valid during the period of February 1, 2008, through
26 December 1, 2008.
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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5050 states:

"(a) Except as provided in subdivision (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096.)."

5. Section 5060 states:

"(a) No person or firm may practice public accountancy under any name which is false or misleading.

"(b) No person or firm may practice public accountancy under any name other than the name under which the person or firm holds a valid permit to practice issued by the board.

"(c) Notwithstanding subdivision (b), a sole proprietor may practice under a name other than the name set forth on his or her permit to practice, provided the name is registered by the board, is in good standing, and complies with the requirements of subdivision (a)."

6. Section 5100 states:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

...

"(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

• • •

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter."

7. Section 498 states:

“A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.”

8. Section 477 states, in part:

“(b) ‘License’ includes certificate, registration or other means to engage in a business or profession regulated by this code.”

9. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 87, states, in part:

“(a) 80 Hours. As a condition of active status license renewal, a licensee shall complete at least 80 hours of qualifying continuing education as described in Section 88 in the two-year period immediately preceding license expiration, and meet the reporting requirements specified in subsection (a) of Section 89. A licensee engaged in the practice of public accountancy as defined in Section 5051 of the Business and Professions Code is required to hold a license in active status.

1 No carryover of continuing education is permitted from one two-year license renewal period to
2 another.”

3 11. California Code of Regulations, title 16, section 88, states, in part:

4 “(a) The overriding consideration in determining whether a specific program qualifies as
5 acceptable continuing education is that it be a formal program of learning which contributes
6 directly to the professional competence, of a licensee in public practice. It is the obligation of
7 each licensee to select a course of study, consistent with the requirements of this section and
8 Sections 88.1 and 88.2, which will contribute directly to his or her professional competence.
9

10 “(1) Licensees who renew their licenses after July 1, 2001, shall complete a minimum of 50
11 percent of the required continuing education hours in the following subject areas: accounting,
12 auditing, taxation, consulting, financial planning, professional conduct as defined in Section 87.7,
13 computer and information technology (except for word processing), and specialized industry or
14 government practices that focus primarily upon the maintenance and/or enhancement of the
15 public accounting skills and knowledge needed to competently practice public accounting.
16

17 “(2) Licensees who renew their licenses after July 1, 2001, may claim no more than 50
18 percent of the required number of continuing education hours in the following subject areas:
19 communication skills, word processing, sales, marketing, motivational techniques, negotiation
20 skills, office management, practice management, and personnel management.”

21 1. California Code of Regulations, title 16, section 88.1, states, in part:

22 “(a) Live Presentation.

23 “In order to qualify as acceptable continuing education under Section 88(b) the provider of
24 the live presentation program must:
25

26 “(1) Require attendance and retain for a period of six years a record of attendance that
27 accurately assigns the appropriate number of contact hours for participants including those who
28 arrive late or leave early.

1 ...

2 “(3) Issue a certificate of completion to each licensee upon satisfactory completion of the

3 course and retain records of licensees receiving certificates of completion for a period of six

4 years. The amount of credit reflected on the certificate of completion shall be calculated in

5 accordance with Section 88.2(a).”

6 2. California Code of Regulations, title 16, section 88.2, states, in part:

7 “(a) Live Presentation.

8 “In order to qualify as acceptable continuing education under Section 88(b) a live

9 presentation program must:

10

11 “(1) Be measured in 50-minute class hours. A program must be at least one 50-minute class

12 hour in length to be acceptable continuing education. For a program composed of several

13 segments in which individual segments are less than 50 minutes, the sum of the segments, in

14 increments not less than 25 minutes, may be added together to equal a full 50-minute class hour.

15 For a program that is longer than one 50-minute class hour, credit shall be granted for additional

16 25-minute segments (one-half of a 50-minute class hour). Only class hours or the equivalent (and

17 not participant hours devoted to preparation or study time) will be used to measure the hours of

18 continuing education.

19

20 “(2) Meet the provider requirements for live presentation under Section 88.1(a).”

21 3. California Code of Regulations, title 16, section 89, states, in part:

22 “(a) Upon renewal, a licensee who is required, pursuant to Section 87, to obtain continuing

23 education must provide a written statement, signed under penalty of perjury, certifying that the

24 requisite number of continuing education hours has been obtained.

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“(c) If continuing education credit for attending a continuing education course is claimed, the licensee shall obtain and retain for four years after renewal a certificate of completion or its equivalent.

• • •

“(j) A licensee who is determined by the Board at renewal not to have completed the required number of hours of qualifying continuing education shall be required to make up any deficiency. A licensee who is required to make up a deficiency shall be ineligible for active status license renewal or conversion to active status pursuant to Section 87.1 until such time as documentation to support the required hours of continuing education for license renewal has been submitted and approved by the Board.

“(k) A licensee's willful making of any false or misleading statement, in writing, regarding his or her continuing education shall constitute cause for disciplinary action pursuant to section 5100(g) of the Accountancy Act.”

12. California Code of Regulations, title 16, section 94, states, in part:

“Failure to comply with these continuing education rules by a licensee engaged in public practice, as defined in Business and Professions Code Section 5051, constitutes cause for disciplinary action under Section 5100.”

COST RECOVERY

13. Section 5107, subdivision (a), states:

“The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.”

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FIRST CAUSE FOR DISCIPLINE

(License Renewal Secured by Misrepresentation of Material Fact)

14. Respondent subjected his certificate to disciplinary action under sections 498 and 5100, subdivisions (b) and (g), in conjunction with California Code of Regulations, title 16, section 89, subdivision (k), for unprofessional conduct, in that on Respondent's January 31, 2008, license renewal, he secured his renewal license by fraud and/or deceit by knowingly misrepresenting a material fact, as follows:

a. On or about December 8, 2008, the Board received Respondent's active license renewal form, for period-ending January 31, 2008, along with his completed Continuing Education Reporting Worksheet ("CE Worksheet"), in which Respondent stated that he was currently practicing public accountancy. On Respondent's renewal form, Respondent reported to the Board that:

i. he completed the required total number of continuing education hours during the two years preceding his license expiration date, which is the period of February 1, 2006 through January 31, 2008, and

ii. he completed a Board-approved 8-hour Professional Conduct and Ethics (PC&E) course during the two years preceding his license expiration date.

b. Respondent signed his license renewal form on or about December 2, 2008, certifying, under penalty of perjury, "that all statements, answers, and representations on the form, including supplementary attached [thereto], were true, complete and accurate." Respondent was required to complete 80 hours of continuing education in his two year renewal cycle by January 31, 2008, in order to renew his license in active status. Based upon Respondent's assertions that he met all requirements for renewal of his license as a certified public accountant, the Board renewed Respondent's license, on or about December 2, 2008.

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1 c. However, after an audit conducted by the Board, Respondent was unable to
2 document completion of 80 hours of continuing education. Respondent falsely reported to the
3 Board that he had completed the required hours and included false information about five
4 courses listed on his CE Worksheet. While Respondent claimed 4 hours of continuing education
5 for each of five courses claimed on his CE Worksheet, the underlying Attendance Record forms
6 and course material clearly listed the continuing education hours as 2 hours for each of the five
7 courses. By doubling the continuing education credit claimed by Respondent for these five
8 courses, it appeared as though Respondent had completed at least the 80 hours of continuing
9 education required for his renewal cycle.
10

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Continuing Education Rules)**

13 15. Respondent subjected his certificate to disciplinary action under section 5100, and
14 California Code of Regulations, title 16, section 94, in conjunction with California Code of
15 Regulations, title 16, sections 87, 88, and 89, for unprofessional conduct, in that Respondent
16 failed to comply with the Board's basic requirements for completing 80 hours of qualifying
17 continuing education prior to the expiration of his license, as follows:
18

19 a. With Respondent's application for active status license renewal for period-
20 ended January 31, 2008, Respondent claimed that he had completed 87 hours of continuing
21 education on his CE Worksheet. However, only 79 of the 87 hours claimed showed a completion
22 date in the two-year period immediately preceding license expiration (February 1, 2006 through
23 January 31, 2008). The 79 hours claimed by Respondent included the falsely doubled continuing
24 education hours of five courses as discussed above in subparagraph 14.c.
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26 b. Respondent listed on his Continuing Education Reporting Worksheet that the
27 required Board-approved PC&E course was completed on December 4, 2008, which was more
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1 than ten (10) months after the two-year period immediately preceding his license expiration on
2 February 1, 2008.

3 c. Respondent did not obtain certificates of completion as required by California
4 Code of Regulations, title 16, section 89, subdivision (c), but rather submitted attendance record
5 forms showing signatures for some of the courses claimed.

6 d. Respondent was unable to document that 48 of 80 required hours continuing
7 education hours claimed were conducted by a qualified provider meeting the requirements of
8 California Code of Regulations, title 16, sections 88, 88.1 and 88.2, as follows:

9
10 i. The credit assigned the claimed provider's courses had not been
11 measured in 50-minute increments and 25-minute increments as required by California Code of
12 Regulations, title 16, section 88.2, but rather were assigned two (2) continuing education credit
13 hours for one and a half (1.5) hour of presentation time, where as under the Accountancy Act,
14 only 1.5 continuing education credit hours are permissible for 1.5 hour presentation time.

15
16 ii. The provider reported to the Board that it does not retain records of
17 attendance or records of licensees receiving certificates of completion for a period of six years as
18 required by California Code of Regulations, title 16, section 88.1, subdivisions (a)(1) and (a)(3),
19 respectively.

20 iii. The Board's records indicate that the Continuing Education Reporting
21 Worksheet that accompanied Respondent's January 31, 2006 license renewal was submitted
22 blank with no courses listed. Upon the Board's request for certificates of completion to support
23 80 hours of continuing education for his January 31, 2006 renewal, Respondent reported that he
24 had taken courses through the same course provider and that no certificates of completion were
25 issued.

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THIRD CAUSE FOR DISCIPLINE

(Practice without a Valid License)

16. Respondent subjected his certificate to disciplinary action under section 5100, subdivision (g), in conjunction with sections 5050, 5051 and 5055, for unprofessional conduct, in that Respondent willfully practiced and held himself out as a Certified Public Accountant when he failed to have a valid license. Respondent's certificate was in a delinquent status during the period of February 1, 2008, to December 1, 2008. During the delinquent period, Respondent held himself out as a CPA in letterhead and business cards while providing services to his clients, which included insurance companies, independent insurance adjusters, and attorneys for measurement of damages from insurance losses or legal disputes.

FOURTH CAUSE FOR DISCIPLINE

(Firm Name Violation)

17. Respondent subjected his certificate to disciplinary action under sections 5100, subdivision (g), and 5060, for unprofessional conduct, in that Respondent willfully practiced public accountancy under a name which is false or misleading. Respondent registered "Gladstein CPA, A Professional Corporation" with the California Secretary of State on January 26, 2001. Respondent did not register the corporation with the Board until December 2008, which was not discovered until the Board's investigation. Respondent admitted practicing under the corporate name since January 26, 2001. Further, Respondent held out his services on his Internet website as "Gladstein CPA, A Professional Corporation."

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

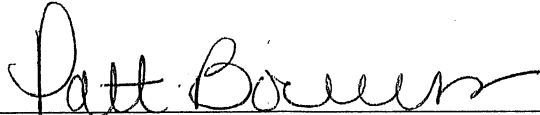
1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate No. CPA #33362, issued to Stuart David Gladstein;

2. Ordering Stuart David Gladstein to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107; and,

3. Taking such other and further action as deemed necessary and proper.

DATED:

December 17, 2009



PATTI BOWERS
Executive Officer
California Board of Accountancy
State of California
Complainant

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